

**PATENTS**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re Application of:** BOVA, DAVID  
**Serial No.:** 09/470,603  
**Filing Date:** 22 December 1999  
**Docket Number:** 50454-56101USCIP3  
**Title:** NICOTINIC ACID COMPOSITIONS FOR TREATING  
HYPERLIPIDEMIA AND RELATED METHODS  
THEREFOR

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**COMMISSIONER FOR PATENTS**

P.O. Box 1450  
Alexandria, VA 22313-1450

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**TERMINAL DISCLAIMER**

MAR 01 2004

Sir:

This is in response to the Office Action mailed on 4 June 2003.

I, Karen J. Messick, Esq., Registration Number 46,256 declare that I am an attorney of record in this application and that I am authorized to execute a terminal disclaimer in behalf for Kos Pharmaceuticals, Inc. (Kos).

That Kos is the assignee of the entire right, title and interest in, to and under U.S. Patent Application Serial Number 09/470,603, filed 22 December 1999 ("the above-captioned application") by virtue of assignment from the inventor, filed on 3 October 2003 (copy enclosed herewith);

That Kos is the assignee of the entire right, title and interest to and under U.S. Patent Number 6,080,428B1, issued 27 June 2000 from U.S. Application Number 08/368,378, filed 14 January 1995 by virtue of assignment from the inventor to Kos which was recorded on 6 March 1995 on Reel 7378, Frame 0625;

That Kos hereby disclaims the terminal part of any patent granted on the above-captioned application which would extend beyond the expiration date of the full statutory term of U.S. Patent 6,080,428B1, including any extension thereof; and

That Kos hereby agrees that any patent so granted on the above-captioned application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent Number 6,080,428B1, this agreement to run with any patent granted on the above-captioned application and to be binding upon the grantee, its successors or assigns.

No terminal part of any patent granted on the above-captioned application is disclaimed prior to the full statutory term (including any extension thereof) of U.S. Patent Number 6,080,428B1 in the event that said patent earlier expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or is terminally disclaimed under 37 C.F.R. §1.321(a), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its full statutory term (including any extension thereof), except for the separation of legal title stated above.

And:

That Kos is the assignee of the entire right, title and interest to and under U.S. Patent Number 6,129,930B1, issued 27 June 2000 from U.S. Application Number 08/814,974, filed 6 March 1997 by virtue of assignment from the inventor to Kos which was recorded on 31 May 2000 on Reel 010844, Frame 0370;

That Kos hereby disclaims the terminal part of any patent granted on the above-captioned application which would extend beyond the expiration date of the full statutory term of U.S. Patent 6,129,930B1, including any extension thereof; and

That Kos hereby agrees that any patent so granted on the above-captioned application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent Number 6,129,930B1, this agreement to run with any patent granted on the above-captioned application and to be binding upon the grantee, its successors or assigns.

No terminal part of any patent granted on the above-captioned application is disclaimed prior to the full statutory term (including any extension thereof) of U.S. Patent Number 6,129,930B1 in the event that said patent earlier expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or is terminally disclaimed under 37 C.F.R. §1.321(a), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its full statutory term (including any extension thereof), except for the separation of legal title stated above.

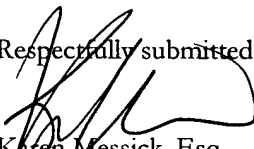
In accordance with 37 C.F.R. §3.73, the undersigned states that evidentiary documents evidencing the chain of titles from the original owners to the assignee have been reviewed and certifies that, to the best of her knowledge and belief, titles are in the assignee seeking to take the action.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made in information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine of imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Accordingly, it is respectfully requested that no double patenting rejection be issued.

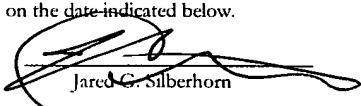
Moreover, in view of the contemporaneous-filed Response and Amendment, and the instant Terminal Disclaimer, it is respectfully submitted that the present application is in condition for allowance.

Therefore, reconsideration and withdrawal of all rejections and objections to the application and prompt issuance of a Notice of Allowance are respectfully requested.

Respectfully submitted,  
  
Karen Messick, Esq.  
Registration No. 46,256  
Attorney for Applicants

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Date: 2/18/04

<b>CERTIFICATION UNDER 37 C.F.R., §1.8</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.	
<u>2/18/04</u> Date	 Jared G. Silberhorn